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No. 463

In the Supreme Court of the United States

OCTOBER TERM, 1929

CHARLES JACKSON, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 17) is reported in 24 F. (2d) 981. The opinion of the Circuit Court of Appeals (R. 39) is reported in 34 F. (2d) 241.

JURISDICTION

The judgment of the Circuit Court of Appeals for the Tenth Circuit was entered on August 2, 1929. (R. 44.) The petition for certiorari was filed October 26, 1929, and allowed on December 2, 1929. (R. 47.)

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION INVOLVED

Whether interest can be awarded against the United States on unpaid installments of a war risk insurance policy from the date due to the date judgment is entered, and on the judgment from its entry until paid.

STATUTES INVOLVED

The statutes involved are set forth in the appendix to the Government's brief in the *Worley case*, No. 548, October Term, 1929, pages 27–29.

STATEMENT

This case has been assigned for argument with the case of *United States* v. *Mattie Puckett Worley*, No. 548, this Term, as one case, the question herein being identical with one of the questions presented in the *Worley case*, in which the Government's principal brief on this point has been filed, and to which the Court is respectfully referred.

This action was brought in the United States District Court for the District of Kansas to recover on a war risk life insurance policy on the ground of permanent and total disability. (R. 2.) The case was tried before the court on a written waiver of trial by jury (R. 14), and resulted in a judgment in favor of the plaintiff (R. 28), awarding him accrued installments of $57.50 per month under the policy from October 30, 1918, to the date of the entry of the judgment, with 6 per cent simple interest on each unpaid installment, and 6 per cent interest on the judgment from the date of its entry until paid. (R. 29.)

The Government took an appeal to the United States Circuit Court of Appeals for the Tenth Circuit from the ruling of the District Court on the allowance of interest (R. 16), but did not question the right of the plaintiff to recover on the policy. The Circuit Court of Appeals held that interest was not recoverable, and reversed the judgment of the District Court. (R. 41.)

SUMMARY OF ARGUMENT

In *Boston Sand & Gravel Co.* v. *United States,* 278 U. S. 41, 47, this Court held that interest can not be awarded against the United States except where it assumes that liability by contract or it is so provided by express words of the statute, or where it must pay it as part of just compensation. Here neither the statute nor contract allows it, and "just compensation" is not involved. The language of this Court in *Standard Oil Company* v. *United States,* 267 U. S. 76, holding that interest was allowable against the United States on the ground that when the United States went into the insurance business it must be assumed to have accepted the ordinary incidents of suits in such business, which case was based on a policy of marine insurance issued by the Government on a steamship and her freight and advances against war risks, pursuant to the Act of September 2, 1914, c. 293, 38 Stat. 711, is not controlling in the case under consideration, which was brought to recover on a policy of war-risk life insurance issued

by the Government under authority of the War Risk Life Insurance Act of October 6, 1917. Marine insurance under the 1914 Act and life insurance under the 1917 Act are distinct and controlled by different principles, as shown by the language of this Court in *White* v. *United States,* 270 U. S. 175, 180.

Our contentions are supported by decisions of the Circuit Courts of Appeals for the Ninth and Tenth Circuits. There is no decision of any Circuit Court of Appeals contrary to them. The decision of the Circuit Court of Appeals for the Sixth Circuit in *United States* v. *Woolen,* 25 F. (2d) 673, allowed interest at the rate of five per centum, compounded annually, and this was based solely upon a misconstruction of Section 309 of the World War Veterans' Act, as amended. The Veterans' Bureau has never paid interest on accrued installments, and its construction of the Act—impliedly recognized by Congress by reenacting substantially the same language of the original Act—is entitled to weight.

ARGUMENT

The question involved in this case is identical with one of the questions in *United States* v. *Mattie Puckett Worley,* No. 548, October Term, 1929, which is assigned for argument with this case. The argument on behalf of the Government on this question appears on pages 12–24 of the brief in that case.

CONCLUSION

The decision of the Circuit Court of Appeals in denying interest in this case is in harmony with the decisions of this Court and of the Circuit Court of Appeals for the Ninth Circuit. Neither the War Risk insurance legislation nor the contract of insurance provides for interest against the United States. The decision of the Circuit Court of Appeals disallowing interest is correct and should be affirmed.

Respectfully submitted.

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